IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9253 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MITESH GULABRAI SAYANI

Versus

STATE OF GUJARAT

Appearance:

MR BP GUPTA for Petitioner

MR SK PATEL, Learned AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/10/2000

C.A.V. JUDGEMENT

1. The petitioner has filed the present petition under Article 226 read with Articles 14, 19, 21 and 22 of

the Constitution of India challenging the order of his detention dated 26.7.2000 recorded by the second respondent in exercise of powers conferred on him by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. The petitioner has challenged the order of his detention on several grounds which may be enumerated as follows :

(a) That the Public Analyst report has not been supplied to the petitioner.

(b) That the PA report has been signed by the PA, but is required to be signed by the Director as per Rules and, therefore, this report cannot lbe taken into account for the purpose of detention.

(c) That alternative remedy was available to the respondents and, therefore, instead of considering less drastic action, the respondents have taken up more drastic action for detaining the petitioner.

(d) That the legible copies of documents relied upon for the purpose of detention have not been supplied to the petitioner.

3. On the aforesaid contentions, it has been alleged that the order of detention passed against the petitioner is illegal and it is required to be quashed and set aside. The petitioner has therefore prayed for appropriate writ, order or direction quashing and setting aside the order of detention dated 26.7.2000 placed at Annexure-A passed by the second respondent under the provisions of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 as illegal, invalid, null and void and suffers from total non-application of mind and violative of Articles 14, 21 and 22 of the Constitution of India. The petitioner has also prayed for his release from detention forthwith.

3. On receipt of the aforesaid petition, rule was issued and Mr. S.K.Patel, Learned AGP appears for respondent nos. 1, 2 and 3 and has filed affidavit of District Magistrate, Jamnagar which has been taken on record. Mr. Patel has also filed another affidavit of Mr. P.R.Shukla, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies & Consumer Affairs Department which has also been taken on record. So far

Union of Indian is concerned, Ms. P.J.Dawavala, learned Addl. Senior Standing Counsel for Union of India has appeared in the matter and she has filed affidavit of Mr. R.N.Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi which has been taken on record. I have heard the learned advocates for the parties and have perused the papers.

4. It has first been contended that the reports of the chemical analyser have not been supplied to the petitioner. That they are the basis for passing detention order and they have not been considered for passing the detention against the petitioner. That therefore it was necessary for the respondents to supply the said reports to the petitioner. During the course of hearing, it was made clear that all the reports of chemical analyser have been supplied to the petitioner and learned senior advocate for the petitioner has agreed that the said reports have been supplied to the petitioner. Therefore, this ground does not help the petitioner. It has then been contended that as per Sub-Rule 7 of Rule-4 of the Prevention of Food Adulterations Rules, 1954, the certificates are required to be signed by the Director. That in the present case, those certificates have been signed by the public analyst and, therefore, the same have been issued by an officer who has no authority to sign as per the provisions of Rules. Now, it has to be considered that these are not the reports issued by the Central Food Laboratory. In fact, these reports have been issued by public analyst. Section 8 of the Prevention of Food Adulteration Act, 1954 empowers the State Government to appoint public analyst for such local area as may be assigned to them by the State Government. Section 13 of the Prevention of Food Adulteration Act,1954 provides that public analyst shall deliver, in such forum as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis. This means that report of analysis is required to be delivered by public analyst. That shows that he is competent to sign the reports of analysis. Therefore, the reports of analysis sign by the public annalist are perfectly legal. These reports can be gathered at page 71 etc. Therefore, it cannot be said that the reports signed by public analyst cannot be taken into consideration. This point also cannot come to the rescue of the petitioner.

5. Another contention raised on behalf of the petitioner is that the detaining authority did not

consider the less drastic measures to be adopted before passing the order of detention and, therefore, it is a case of non-application of mind and, therefore, detention order stands vitiated.

6. For this purpose, the learned senior advocate for the petitioner has relied upon a decision in the case of Harsukhbhai Hansarajbhai Kachhadiya Vs. Union of India, reported in 1998 (1) GLR 710. There, this Court has observed that Court must be satisfied that this possibility was very much present before the detaining authority and after taking into consideration and after knowing the pros and cons, the prognosis was arrived at. If this is not done, then clearly detention would be bad because it would be suffering from the vice of non-application of mind. It has also been observed that by initiating appropriate action under Clause 12 (AA) of the Order of 1980, illegal activities of the petitioner could be stopped immediately or effectively. That this aspect of the case is required to be considered by the detaining authority before passing the order of detention against the petitioner.

In the present case, we find that the detaining authority has stated in para -8 of the detention order at page-31 (17) that the detention is the only remedy which can be effected against petitioner for preventing black marketing and for maintenance of supply of essential commodities. Then again in para-9 of the said detention order, the detaining authority has observed that it is not possible to prevent the petitioner from carrying out aforesaid activities by resorting to the process under the ordinary law. That therefore with a view to prevent the petitioner from carrying out such activities and as a matter of immediate and effective measures, it was found necessary to pass detention order against the petitioner. Therefore, it can be said that the detaining authority was aware of the alternative remedies available to him and he did consider the said aspect of the case at the time of passing detention order against the petitioner. However, he was of the view that less drastic measures were not effective or were not sufficient and, therefore, it was necessary to pass the order of detention against the petitioner. It has also been argued that the petitioner could be dealt with by a criminal complaint against him either under the provisions of the Prevention of Food Adulteration Act or under the provisions of Essential Commodities Act. It has been argued in trply that these are the lengthy procedures and therefore those proceedings cannot effective stopp the petitioner from carrying on the aforesaid activities. This criminal

prosecution may not be effective and may not be urgent measures to be adopted against the petitioner. It may be a matter of common experience, that criminal prosecution may take its own time, it would depend upon work-load of the Criminal Courts and availability of witnesses and accused persons. Delay in disposal of criminal cases is not unknown also. Then, it has also been argued that even the cancellation of licence would be less drastic measure and that could be adopted by the detaining authority instead of passing the detention order. Now, again the detaining authority has observed as aforesaid that detention order was the only effective measures to be adopted against the petitioner. Here, it has to be considered that the cancellation of licence would amount to quasi judicial function and, therefore, it would be the subject matter of scrutiny by judicial authority. Therefore, the said action can be challenged and it may take its own time. There also the decision may not be prompt. In the meantime, the detaining authority may have reasonable apprehension that the petitioner may continue with his activities referred to in the order of detention. Under these circumstances, it can be said that even this aspect was considered by the detaining authority, but the detaining authority did not find it effective measure for immediately stopping the petitioner from carrying out the said activities.

7. In my opinion, it may not be necessary for the detaining authority to illustrate each and every alternative measure available to him for proceedings against the petitioner before passing the order of detention. All alternative remedies may not be enlisted and may not be dealt with in the order of detention. At the same time, when the detaining authority has positively mentioned that this is the only effective measure against the petitioner and when it has been mentioned again that this is the only effective measures for immediately stopping the petitioner from carrying out the said activities, then in that event, it cannot be said that less drastic steps have not been taken into consideration by the detaining authority which clearly demonstrate that the detaining authority was aware about the less drastic measures which could be adopted against the petitioner. However on comparison, he appears to be of the view that the detention order was only effective measure which could immediately and effectively prevent the petitioner from carrying out the aforesaid activities. Therefore, it cannot be said that the detaining authority did not consider the less drastic measures and that he was not aware of the said measures which were available under law. It therefore cannot be

said that the detention order suffers from non application of mind.

8. Similar decision can be found from the case of Musabhai Sodha Vs. State of Gujarat, reported in 1999 (1) GLH 432. There, the aspect whether the prejudicial activities of the detenu could have been prevented by cancelling or suspending licence of the detenu was not considered while passing the detention order was considered in the said decision. There, it was found that subjective satisfaction vitiated before non application of mind on that aspect of the case.

In the present case, we find that at two places the detaining authority has applied his mind to the alternative remedies of less drastic measures and has found that detention order is the only alternative remedy available to him against the petitioner with a view to immediately prevent the petitioner from carrying out the said activities and by way of effective measures. Therefore, when this satisfaction has been recorded by the detaining authority, the aforesaid decision will not apply to the facts of the case before us.

9. Another decision of this Court on this point has been rendered by thy learned advocate for the petitioner in the case of Chunigar Umraogar Gosai Vs. District Magistrate, Rajkot and Others, reported in 1991 (2) GLR 949. There, it has been observed that if the purpose of the Act can be achieved by a less drastic act, the order of detention would not be justifiable. There, it has been observed that Section 12 AA affords a proper remedy and that provision was not considered by the detaining authority and, therefore, the order was quashed. It is true that in the present case, the aforesaid provision has not been referred in so many words, but at the same time, as said above there may be so many alternative remedies and it may not be possible to enlist them or illustrate them. However, when the detaining authority has considered that there were some alternatives which dealing with the case of the petitioner, but the mode of detention was effective measure to prevent him immediately from carrying out the said activities, the detaining authority has passed the order of detention. Therefore, it can be said that the alternative less drastic remedies were considered by the said authority and after due consideration to the said aspect, the order of detention has been passed. Therefore this authority will not help the petitioner.

10. Then we can turn to one more decision of the

Division Bench of this Court in the case of Bachhraji Biharilal Pitaliya Vs. District Magistrate, Surat and Others, reported in 1994 (1) GLR 843. There, the Division Bench of this Court had occasion to consider the alternative mode of action in similar matter and observations of the Division Bench of this Court in the said matters may be reproduced for ready reference as follows :

> "The remedy, therefore, of suspending their licences or suspending authorizations of fair price shops is not directly available against such detenus inasmuch as such persons can with their modus operandi continue such nefarious activities by approaching other licence-holders or other persons holding authorization of fair price shop. In fact, such persons, if let-loose, may prove to be more dangerous to the public distribution system of essential commodities, and their immediate prevention being the goal in the larger public interest, in our opinion, resort to such power was absolutely essential as found by the authority in the case before us."

> "In our opinion, the prosecution is an independent remedy to which resort can be had, but since prosecution is no bar to passing of an order preventive detention, in our opinion, the authority is not required to focus its attention to resorting to a remedy of prosecution under Section12(AA) of the said Act."

> "In the facts of the case before us and more particularly after going through the grounds of detention we are more than satisfied to hold that the detaining authority was absolutely alive to the provisions of Section 12 (AA) of the Essential Commodities Act, and was also alive to the facts that launching of criminal prosecution was not sufficient to prevent the detenus from carrying on their prejudicial activities. We do not find that necessary recitals contained in the grounds of detention in each case is a mere mechanical recital of statutorily sanctified phrases but we hold that it is a real satisfaction reached by the detaining authority which was more alive to its duties and which wanted to curb the nefarious activities of the detnue."

Therefore, it was made very clear by the

aforesaid observations in the said matter that if such persons are not dealt with by preventive detention measures then they may be proved more dangerous and, therefore, the Division Bench of this Court recorded a finding of fact that it is not expedient to undertake those measures as substitute for preventive detention measure.

12. As said above, the detaining authority has not elaborately discussed the alternative modes. However, it has been observed that it is not expedient to go for said measures instead of passing detention order against the petitioner. I am of the view that quasi authorities are not required to discuss the matter at length and discuss the aspects elaborately. It is sufficient to demonstrate that they were aware of alternative remedy as a substitute for the detention order. It may also be sufficient for them to demonstrate application of mind on such alternative remedy by short reasons to the effect that it is not expedient to go by alternative mode, detailed discussion and detailed reasons may not be expected from them. They are not required to write judgment but they are expected to write order and the order has to be a speaking order. That does not mean that such orders require elaborate discussion in details.

13. It has also been argued that as per the previous decision, the authority is required to be consider pros and cons of the alternative remedy also. As said above, by the Division Bench of this Court and even otherwise also, it can be gathered that the process of cancellation of licence and criminal prosecution are all lengthy process and in the meantime, the persons indulging in such activities cannot be stopped unless more drastic action are taken. As above said, abovesaid actions are after all of quasi judicial nature and, therefore, they are subject matter of judicial scrutiny and such scrutiny may take its own time and in the meantime, the persons indulging in such activities may continue with the same. Therefore, with a view to promptly stop them from undertaking such activities, the detaining authority may find it just, proper and necessary the detain such persons.

14. Moreover, this detention under the Act is not for a long period. It is for a very short period and, therefore also it has to be considered that detailed discussion and elaborate consideration may not be expected from the detaining authority which is required to apply its mind on the material placed before it. It is more so when the authorities are required to take

prompt action in such matters. It is also a matter of experience that even before the detention orders are actually passed and before they are implemented or executed, people rush to the Court for stopping authorities from passing the orders or from implementing such orders if passed against them. Therefore quick and prompt action is required to be taken by them. In this view of the matter also, I am of the view that detailed discussion and elaborate reasons are not expected from the said authority.

In the present case, it has been observed that authority did consider the alternative remedies but it was found necessary to pass detention order with a view to have quick and prompt action and that too as an effective measure against the petitioner to detain him under the Act. In that view of the matter, it cannot be said that there was non application of mind with respect to other alternative remedies which may be treated to be less drastic remedy compared to the order of detention under the Act. Therefore, this point also does not come to the rescue of the petitioner.

15. The reliance has also been placed by the learned senior advocate for the petitioner on the decision of this Court in the case of Ganeshbhai Gangabhai Harijan Vs. District Magistrate, Banaskantha and others reported in 1983 (2) GLR 1016 which also speaks of alternative remedy and the satisfaction of the detaining authority with respect to the action to be taken by way of alternative measures. However, I am of the view that the observations made in Bachharaji Biharilal Pitaliya (supra) is good answer to such arguments about application of mind with respect to the alternative remedy.

16. Last argument advanced on behalf of the learned senior advocate for the petitioner is that certain documents supplied to the petitioner were not legbile and therefore the petitioner could not make effective representation against his detention. So far the Panchanama, statements of witnesses and Rojkam are concerned, it is an admitted position that legible typed copies of these documents have been provided to the petitioner by the respondents and, therefore, no grievance was made with respect to such documents. However, grievance was advanced by the learned senior advocate for the petitioner with respect to the detention order dated 26.7.2000 which is placed at page -24. It has been contended that at bottom of the order there is a reference to Section 3 of the Prevention of Black

Marketing and Maintenance of Supply of Essential Commodities Act, 1980. That there is a bracket and the bracketed portion is not legible because of the rubber stamp overlapping the said writing in the said bracket. That therefore the petitioner did not get reasonable opportunity to read as to what was written in the said bracket. Now, ex-facie it can be found that bracketed portion reads no.7 of 1980. Apart from this, at page-23, the said order has been given in Gujarati language and there, there is a reference to the said Act. There is also a bracket and the bracketed portion reads no.7 of 1980. This shows that there is a reference to the said Act which is an Act of 1980 and in fact, 7th Act of 1980. Therefore, Gujarati version is clearly legible and it is not the case of the petitioner that the petitioner is unable to read Gujarati. Then it cannot be said that the document supplied to the petitioner was not legible. Therefore even if it is found that No.7 of 1980 bracketed in page-24 is not clearly legible then also its Gujarati version is legible, there is no rubber stamp on the said bracketed portion and, therefore, it cannot be said that this document supplied to the petitioner was not legible.

15. Another point of non-supply of legible copy of document is with respect to page-28, para-4 refers to Mr. H.S.Pandya as a Food Inspector of Janmangar Office. There is a round rubber stamp and argument has been advanced by the learned senior advocate for the petitioner that the name of the officer is not legible. It is not possible to agree with this argument of the learned advocate for the petitioner that the name of the Food Inspector Mr. H.S.Pandya is not legible, despite the fact that there is a round rubber stamp affixed on para-4 on page-28. Therefore, this grievance is not acceptable.

16. Another argument is that page-27 onwards contained round rubber stamps and those rubber stamps are not legible. After all, round rubber seals are affixed with a view to see that unauthentic or unauthorized papers are not substituted for the originals. The round seals are of District Magistrate, Jamnagar, Gujarat State. It is to be seen that said documents commencing from page-27 dated 26.7.2000 has been signed at page-33 by the District Magistrate, Jamnagar and his designation has been mentioned below his signature. This clearly shows that these are rubber stamps of District Magistrate, Jamnagar, Gujarat State and officer signing the documents is detaining authority and his designation has been clearly typed at page-33. Even at the top on page-27, there is a mention about the name of the office

and it can be read as "District Magistrate, Jamnagar". Therefore, it cannot be said that some portion of some rubber stamps are not legible and all the documents must be treated to be illegible.

17. Then reference has been made to page-25 which is the xerox copy of licence issued for carrying on business in respect of essential commodities. Page-25 of the same is the xerox copy of the licence, page-1 of this document reads as follows "

> "Subject to the provisions of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981 and to the terms and conditions of this licence..... are hereby authorized to carry on business of the under-mentioned essential articles as a retailer/hawker/wholeseller/Commission Agent / Producer."

An argument has been advanced that rubber stamp has been affixed on left portion of the said part and, therefore, some words are missing and are not legible. I am of the view that despite the presence of rubber stamp, the said lines are legible and entire part including part on which rubber stamp appears has been reproduced hereinabove which clearly shows that entire writing in part-1 of page-25 is clearly legible. Therefore, it cannot be said that this document is not legible. Then it has also been contended that certain typed copies have been supplied to the petitioner and typed copies have been prepared from the original handwritten documents and it is mentioned in this typed written documents that the same have been compared from original documents by the person who signed the said copies. The contention is that the person who has signed the said copies showing that he had compared copies with original documents has not stated his name below his signature and signature is not legible.

18. Now, it is very clear that this typed copies are found on record at page 49, 51,52,55 and 57 etc. It appears that these documents have been compared with original documents and some one has signed the same on token of having compared the same with the original. The signature of comparing person is not clearly legible. There cannot be any dispute about the same. Here, I am of the view that the person comparing the documents is suppose to be a person belonging to clerical cadre. No representation is required to be made before him. His work is simply to compare the copies with the original

documents and on the basis of comparison, the documents have been attested by the Executive Magistrate, Jamnagar who has signed the said documents and who has put his rubber stamp below his signature which shows that copies have been attested by the Executive Magistrate, Jamnagar. So, officer who has attested documents or who has certified the same to be true, has put his rubber stamp below his signature which is legible. In that view of the matter, I am of the view that clerk comparing the documents is not the authority to decide the matter and therefore even if his signature is not legible, it does not take away any right of the petitioner of making effective representation. If the copy is not legible or if the copy is not really true or if it is found to be wrongly certified to be true then the petitioner may have some grievance against supply of such copies but when the documents supplied are clearly legible, there is no dispute that they are certified to be true and when it is not noticed that same have been wrongly certified as true copies then in that event, simply because the person comparing the documents with original has not put a legible signature or has not written his name below his signature, it does not cause any prejudice to the petitioner and when no prejudice has been caused or when no prejudice is likely to be caused to the petitioner, then in that event detention order cannot be quashed and set aside.

19. It has also been contended that in the different set of documents, comparison has been done by some one else. This can be gathered at page-65 which shows that documents have been compared by one H.H.Pandya and his name has been written below his signature. It is true that similar action can be taken in respect to page-29 onwards but as stated above, the person comparing the documents is not an authority of decision making process and, therefore, simply because his signature is not legible it cannot be said that the proceedings would be vitiated or that the prejudice would be caused to the petitioner or that the petitioner would not be in a position to submit effective representation against his detention without knowing the name of the persons who had compared the copies of the documents with the original. It has also been argued that such comparing person may have some enmity with the petitioner. The question of enmity does not arise in the present case since the persons comparing the documents are not the authority to the decision making process. There is nothing on record to show that he has played some role in the process of passing detention order.

20. On administrative side, matters may be dealt with at several levels. Sometimes clerks may prepare the file. Sometimes some notings may be prepared by a senior head. Sometimes files may be carried by Class-4 persons. These are not the persons who can be said to be the authorities to decision making process. Therefore, simply because their signatures are not legible or when the said persons have not indicated their names below their signatures, it cannot be said that some prejudice has been caused to the petitioner. If there is no case of any prejudice being caused or likely to be caused to the petitioner then in that event, detention order cannot be quashed and set aside.

21. Argument was also advanced to the effect that on account of rubber stamps affixed at page-29, 30 and 31, some lines are missing as rubber stamp has been affixed on those lines and hence, those portions are not legible and, therefore, it may be held that the petitioner was not supplied with legible copies of documents. It is true that rubber stamps have been affixed on 2 to 3 lines at the bottom of pages 29, 30 and 31, but considering the quality of paper and considering the quality of type writer used and considering type written protion below said rubber stamps at page 29,30 and 31 it is clear that the writings are clearly legible on page- 29, 30 and 31 despite the presence of rubber stamps.

22. Mr. Patel, learned AGP has relied upon a decision in the case of Kamarunnissa Vs. Union of India, reported in AIR 1991 SC 1640, particularly, he has referred para.14 of the said judgment. There, it has been observed that where the documents referred to in grounds of detention but not relied upon by D.A. while arriving at subjective satisfaction to detain, it would not be necessary for him to supply the said documents to the detenu. Therefore, non-supply of such documents would not vitiate the detention. It is further laid down therein that mere statement that certain documents were not supplied is not sufficient but the detenu must show that non-supply has impaired his right. Therefore, even applying this principle on the facts of the case before us, it will be very clear that even if the signature of comparing person is not legible that would not prejudice the right of the petitioner who does not show as to how the prejudice has been caused or the prejudice is likely to be caused to him if the petitioner did not know the name of the person who has compared the documents. Moreover, it seems that comparing process has been done by him after the orders were passed. This was probably with a view to see that compared and attested copies are

supplied to the petitioner. Therefore, comparing person had no role to play in decision making process and aforesaid aspects clearly show that he did not play any role in the said process. Therefore, there was no question of prejudice being caused to the petitioner, if the petitioner could not read as to who comparing persons were since the signatures were not legible and the name of comparing person was not mentioned below his signature. Therefore, considering the entire case, it is clear that the case does not suffer from inconfirmity and illegality, no illegality is proved to have been committed by the detaining authority at any point of time. All the documents relevant and relied upon have been supplied to the petitioner, copies are found to be legible. The detaining authority has applied his mind even to the less drastic measures and, therefore, detention order does not suffer from want of application of mind.

22. In that view of the matter, no illegality is shown to have been committed at any stage and, therefore, the detention order cannot be quashed and set aside. In that view of the matter, the petition is required to be dismissed and accordingly, the same is dismissed. Rule is discharged with no order as to costs.

(D.P.Buch,J)
(vipul)